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Brf. of Parsons 35 for Petitioner.

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Supreme Court of the United States.

AMERICAN SUGAR REFINING COMPANY,
Petitioner,

vs.

THE UNITED STATES,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

JNO. E. PARSONS,
Of Counsel for Petitioner.

C. G. Burgoyne, Walker and Centre Streets, New York.

Supreme Court of the United States.

AMERICAN SUGAR REFINING COMPANY,
Appellant and Petitioner,

vs.

THE UNITED STATES,
(2676.) Appellee and Respondent.

THE SAME,
Appellant and Petitioner,

vs.

THE SAME,
(2689.) Appellee and Respondent.

Brief for Petitioner.

The construction put by the courts below upon the provisions of the Customs Administrative Act in question, is palpably unfair to the importer. It compels the Government to take toward him an attitude which is unconscionable. It introduces into the administration of the tariff that uncertainty which this Court has declared to be "the bane of commerce."

These are the reasons which are believed to justify the appellants in asking this Court, by writ of *certiorari*, to inquire whether the construction attended by such results is in reality warranted by the language employed by Congress, or whether such an intention can be justly imputed to it.

Throughout the entire act one consistent purpose runs, declared with painstaking clearness—to wit, that the taxable value of imported merchandise shall be fixed immutably at its value on the

day of actual shipment" from the foreign port, as it then subsists; provided only it shall so far survive the voyage as still to constitute "merchandise" when actually imported into this country.

Congress evidently contemplated the possibility of a change in the condition, and consequently in the value, of merchandise during the voyage of importation—sometimes in the direction of an increase in value and sometimes in the direction of a decrease. The provision for the latter case is found in Section 23 of the act, and is uncompromisingly clear:

"No allowance for damage to goods, wares and merchandise imported into the United States shall hereafter be made in the estimation and liquidation of duties thereon. But the importer thereof may, within ten days after entry, abandon to the United States all or any portion of goods, wares and merchandise included in any invoice, and be relieved from the payment of the duties of the portion so abandoned, provided that the portion so abandoned amount to ten per centum or over of the total value or quantity of the invoice."

The importer is informed, in other words, and in language to which no Court has as yet ventured to give other than its "literal" meaning, that, no matter how much his merchandise may have deteriorated in value during the voyage, he must pay duty upon the whole of it at its value at the commencement of the voyage; unless, indeed, he be willing to abandon it utterly to the Government.

This provision is harsh enough, even if countervailed by the provision, which the appellant contends is contained in Section 19 of the act, that the Government will adhere to the same standard of value, even if during the voyage of importation the change in the merchandise be in the direction of an increase in value. But the construction placed upon this section by the Courts below deprives the importer of even this imperfect compensation. It places the Government in the position of exacting of the importer of merchandise which undergoes a change of condition, and therefore value, during the voyage, that the dutiable value shall be ascertained before the change, if for the worse; but after the change, if it be for the better.

No importer, therefore, if uncertain whether or not the merchandise will increase or decrease during the voyage, can calculate in advance the duties which he must pay upon his imports. He is, in a new sense, always at the peril of the seas, and with no insurance.

Nor are these the only evils of the construction of the statute adopted by the Courts below. It brings about such absurd results as are presented in the case at bar, that the Government actually exacts and is paid duty upon the same merchandise twice over.

Upon the theory that the drainage is simply water and that consequently all the value which was in the sugar when exported still remains there (Case 2689, fol. 68), duty is exacted of the importer upon the whole quantity of sugar originally laden on board, although a large part of it had drained away into the bilge in the course of the voyage. Yet this very drainage, "too fine an article to throw away," "sometimes so thick as to classify as sugar" (Case 2676, fol. 104), is entered at the Custom House by the captains of the vessels and duty paid on it a second time *(Id.*, fol. 105*)!*

The foregoing, together with those stated in the petition itself, are the grounds upon which the petitioner asks this Honorable Court to bring this case before it for review. The grounds upon which the petitioner expects that if this Court shall review the case, it will determine the Courts below to have been in error, are likewise stated in the petition and in the briefs below, herewith submitted, and are not here reiterated.

Respectfully submitted,

JNO. E. PARSONS,
Of Counsel for Petitioner, the American
Sugar Refining Company.